The opinion in support of the decision being entered today is *not* binding precedent of the Board

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Ex parte ROBERT JOHN COLVER

Appeal 2006-3415
Application 09/601,810
Technology Center 3600

Decided: September 26, 2007

Before: WILLIAM F. PATE, III, MURRIEL E. CRAWFORD, and JENNIFER D. BAHR, *Administrative Patent Judges*.

CRAWFORD, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF CASE

Appellant appeals under 35 U.S.C. § 134 (2002) from a final rejection of claims 43-56. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

Appellant invented a method of constructing a building unit (Specification 1).

Claim 43 under appeal reads as follows:

> 43. A method of constructing a building unit module having two pairs of opposing sides, a roof and a floor, the method comprising forming at least three substantially similar rectangular frame members, positioning the frame members vertically in an aligned row one with the other with a spacing between each adjacent pair of frame members, connecting a plurality of horizontal runners to the frame members with horizontal runners parallel to each other, extending along one pair of said two pairs of sides with a spacing between each adjacent pair of runners to form a lattice framework, whereby loads on the module are distributed substantially equally throughout the framework, securing horizontal angle members to the internal corners of the lattice framework, and securing sheeting to the lattice framework via the runners so as to form an enclosure.[1]

The Examiner rejected claims 43-56 under 35 U.S.C. § 103(a) as being unpatentable over Payne in view of Bowers.

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Bowers	US 3,605,350	Sep. 20, 1971
Payne	US 5,735,639	Apr. 07, 1998

The Examiner found that Payne discloses the invention as claimed except that Payne does not disclose connecting a plurality of horizontal runners to the rectangular frame members. The Examiner relied on Bowers for teaching connecting a plurality of horizontal runners to the frame members. The Examiner concluded that it would have been obvious to a person of ordinary skill in the art to modify the Payne method so as to

[1] The claims presented in the Claim Appendix to Appellant's Brief includes the claims as presented in an Appellant's Amendment After-Final filed on April 5, 2004. However, the Amendment was not entered. Therefore, the claims before us are the claims prior to the attempted amendment.

include the step of connecting a plurality of horizontal runners to provide a stronger unit wall.

Appellant contends that neither Payne nor Bowers describes (1) vertically positioning rectangular frame members or "ribs" in a row substantially parallel to each other and therefore do not disclose a lattice framework, and (2) the addition of corner members and connecting sheeting to the horizontal members. In Appellant's view Payne and Bowers disclose four perpendicular walls that are connected together to form a structure.

Appellant further contends that in the structure disclosed by Payne, the loads are not distributed substantially equally throughout the framework.

ISSUES

The first issue is whether Appellant has shown that the Examiner erred in finding that Payne discloses rectangular frame members that are connected by horizontal runners to form a lattice framework.

The second issue is whether Appellant has shown that the Examiner erred in finding that the loads are distributed substantially equally throughout the framework disclosed in Payne.

FINDINGS OF FACT

Appellant discloses a method of constructing a building unit module including the step of forming three substantially similar rectangular frame members 4. The frame members have a plane formed by the four sides of each frame member and each frame member has opposing sides, on which the roof and floor are to be formed. The rectangular frame members are

positioned vertically in an aligned row and then connected by horizontal runners 6 to form the module thereby forming a lattice framework (Specification 7). Horizontal angle members are secured to the corners of the lattice framework and then sheeting is secured to the lattice framework thereby forming an enclosure (Specification 8).

Payne describes a method of constructing a building unit module including the step of forming three substantially similar rectangular frame members 192, 194, 196.....210 (Fig. 5). The rectangular frame members are positioned vertically in an aligned row and connected by horizontal runners 216, 218, 220 ....230 to form a lattice framework (Fig. 5). Horizontal angle members 56 are secured to the corners of the lattice framework and sheeting is secured to the lattice framework so as to form an enclosure (Fig. 1). As a lattice framework is formed, loads are distributed substantially equally throughout the framework.

Bowers discloses a method of constructing a building unit module including the step of positioning rectangular frame members vertically in a row and connecting a plurality of horizontal runners to the rectangular frame members with the horizontal frame members parallel to each other thereby forming a lattice framework (Fig. 15).

DISCUSSION

We will sustain the rejection of the Examiner. We are not persuaded by the Appellant's argument that Payne does not disclose ribs, because this argument is not commensurate in scope with the recitation in claim 43. Claim 43 does not recite "ribs" but rather "rectangular frame members.

Each of the members 192, 194, 196...210 is a rectangular member which is used to construct the frame of a building and thus is a rectangular frame member as claimed. As these rectangular members are each connected to two horizontal runners 216, 218, 220 .....230, we agree with the Examiner that a lattice framework is formed. In addition, Bowers also discloses a lattice framework. We note that sheeting is placed over the Payne lattice structure to form the building.

We are also not persuaded by the Appellant's argument that the lattice structure of Payne does not distribute load substantially because as the Payne structure is a lattice framework the load would be substantially evenly distributed through out the structure.

Appellant has not argued the separate patentability of claims 44-56. Therefore, these claims stand or fall with claim 43.

The decision of the Examiner is *affirmed.*

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv) (2006).

AFFIRMED

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